

DEPARTMENT OF STATE REVENUE

04-20181897R.ODR

Final Order Denying Refund Number: 04-20181897R
Sales/Use Tax
For The 2017 Tax Year

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Indiana Business was not entitled to the refund because it failed to establish that its use of one of its meters was exempt at the time when it filed the refund claim. As a result, the Indiana Department of Revenue properly denied Indiana Business' refund claim.

ISSUE

I. Sales and Use Tax - Refund - Exemption.

Authority: IC § 6-8.1-9-1; [45 IAC 15-9-2](#); Commissioner's Directive 13 (June 2012); Sales Tax Information Bulletin 55 (May 2012).

Taxpayer protests the refund denial of sales tax paid on one of its electricity meters.

STATEMENT OF FACTS

Taxpayer is a restaurant doing business in Indiana. In June 2018, Taxpayer filed a Form GA-110L, Claim for Refund (Claim Number 1872172). Taxpayer requested a refund of \$1,041.59 sales tax paid on one meter (Meter Number xxxx913; "Meter at Issue") during 2017. In its GA-110L Form, Taxpayer stated that "the Department has previously determined that the above Taxpayer qualifies for a partial exemption of its purchases of electricity for [M]eter xxxx913"

The Indiana Department of Revenue ("Department") reviewed and denied the entire refund claim on August 22, 2018. Taxpayer protested the refund denial, but asked that the Department issue a "Final determination without a hearing." This Final Order Denying Refund results. Further facts will be provided as necessary.

I. Sales and Use Tax - Refund - Exemption.

DISCUSSION

Upon review, the Department denied Taxpayer's claim based on the following reason:

Departmental records have been researched: an exemption for electric meter xxxx913 cannot be located.

Taxpayer disagreed, claiming that it was entitled to a refund regarding the sales tax paid on the Meter at Issue. Thus, the issue in this case is whether the Department erred in denying Taxpayer's refund claim on August 22, 2018, because Taxpayer previously obtained an exemption certificate (or equivalent) on the Meter at Issue which was approved by the Department.

IC § 6-8.1-9-1(a) affords a taxpayer a statutory right to file a claim for refund, which, in relevant part, provides:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. . . . [I]n order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following:

- (1) The due date of the return.
- (2) The date of payment.

For purposes of this section, the due date for a return filed for the state gross retail or use tax . . . is the end of the calendar year which contains the taxable period for which the return is filed. The claim must set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the

refund.

[45 IAC 15-9-2](#) further explains, in relevant part, that:

(b) The department has no legal method of generating a claim for refund. A claim for refund can only be initiated pursuant to [IC 6-8.1-9-1](#).

...

(d) When filing a claim for refund with the department the taxpayer's claim shall set forth:

- (1) the amount of refund claimed;
- (2) **a sufficiently detailed explanation of the basis of the claim such that the department may determine its correctness;**
- (3) **the tax period for which the overpayment is claimed; and**
- (4) **the year and date the overpayment was made.**

The claim for refund shall be filed on a form prescribed by the department.

(Emphasis added).

Thus, when a taxpayer determines it overpaid sales or use tax, the taxpayer must file a GA-110L form as prescribed by the Department in order to claim a refund. IC § 6-8.1-9-1(a); [45 IAC 15-9-2](#); Commissioner's Directive 13 (June 2012), 20120530 Ind. Reg. 045120241NRA. The taxpayer also must clearly state "the amount of the refund," "detailed explanation of the basis of the claim such that the department may determine its correctness," "the tax period for which the overpayment is claimed," and "the year and date of the overpayment." [45 IAC 15-9-2](#).

As to claim a refund of utility sales tax, the Department's Sales Tax Information Bulletin 55 (May 2012), 20120530 Ind. Reg. 045120251NRA, further provides, in relevant part:

SEPARATELY METERED OR PREDOMINATELY USED

The exclusion from sales tax applies only if nontaxable utilities are separately metered and are predominately used by the purchaser for the excepted uses. "Predominately used" means more than 50[percent] of the utilities are consumed for the exempted use. Each meter is considered separately to determine whether the utility measured is exempt. If a user has multiple meters, they will not be aggregated together for a determination of predominate use, but each will be considered separately.

FORMS

To receive an exclusion, the taxpayer must complete Form ST-200. The form will be reviewed by the Department and, if the meter qualifies for the exemption, a validated ST-109 will be sent to the taxpayer to be forwarded to the utility company. The ST-109 is the only exemption form that can be accepted by a utility to exempt the utility from collecting the Indiana sales tax. Applications for exemptions (ST-200) are available from the Department of Revenue's website at www.in.gov/dor/3504.htm.

PARTIAL EXEMPTIONS

Any user who does not meet the predominate use test may still qualify for partial exemption under [IC 6-2.5-5.1](#) for utilities that are directly consumed by the purchaser in the direct production of tangible personal property in the purchaser's business of manufacturing, processing, refining, repairing, mining, recycling, agriculture, horticulture, floriculture, or arboriculture. Fuel oil, gasoline, coal, and other types of fuel may also be exempt to the extent that they are directly consumed by the purchaser in direct production. All sales tax must first be paid to the utility, and a claim for refund with documentation must be submitted to the Department using Form GA-110L within 36 months after the date of payment for the utility service.

Throughout its protest, Taxpayer in this instance stated, in part, that:

The basis for the partial denial is that "an exemption for [Meter at Issue] cannot be located." Taxpayer submits the attached [Form ST-200] for [Meter at Issue]. In addition, Taxpayer submits the attached utility study supporting the partial exemption for its electricity purchases.

Upon review, however, Taxpayer's reliance on its "attached [Form ST-200]" and "utility study" is misplaced. Specifically, the issue under this protest is whether Taxpayer initially filed its refund claim in June 2018, Taxpayer

substantiated its claim pursuant to the above-mentioned Indiana law. In other words, Taxpayer was required to provide the previously approved exemption certificate, such as ST-109 or equivalent because Taxpayer claimed that the Meter at Issue was previously approved for an exemption. Taxpayer failed to do so.

In particular, Taxpayer's supporting documents, such as the "[Form ST-200]" and its "utility study" for the Meter at Issue, demonstrated that Taxpayer did not have any exemption certificate (or equivalent) previously approved by the Department in June 2018. Nor did Taxpayer offer any proof of the exempt use of the utility concerning the Meter at Issue when it filed the refund claim. In other words, only after the Department denied Taxpayer's claim, Taxpayer submitted its Form ST-200, Utility Sales Tax Exemption Application, and its utility study to support its refund claim. Thus, without the previously approved exemption certificate from Taxpayer to substantiate its refund claim, the Department properly denied Taxpayer's refund claim (Claim Number 1872172) on August 22. Thus, Taxpayer's remedy is not a tax protest. Rather, Taxpayer is required to submit a complete Form ST-200, Utility Sales Tax Exemption Application, and its utility study to apply and obtain the exemption certificate for the Meter at Issue.

In short, the Department's August 22, 2018, letter properly denied Taxpayer's refund claim because when Taxpayer filed the refund claim in June 2018, it failed to substantiate that the Department previously granted Taxpayer an exemption certificate (or equivalent) to support its exempt use of the Meter at Issue. Without verifiable supporting documentation, the Department was not able to determine Taxpayer's use, exempt or otherwise, on that Meter at Issue. Without the Department-approved exemption certificate, Taxpayer is not entitled to the refund on the sales tax paid pertaining to that Meter at Issue.

FINDING

Taxpayer's protest is denied.

December 7, 2018

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